

**Consideration for preliminary adoption of amendments to 312 IAC 10 governing the removal of a logjam or mass in wood debris in waterways; Administrative Cause No. 10-063W**

The Indiana General Assembly, in House Enrolled Act 1232, passed legislation this year to exempt the removal of logjams or masses of wood debris from permit requirements, with the exception of salmonid streams and natural, scenic and recreational rivers & streams.

By exempting the majority of waterways in the state from permit requirements, the DNR must make rule amendments to provide consistency with the statute. Therefore, the following amendments are proposed:

- 1) Add a definition of a mass of wood debris as used in the statute (312 IAC 10-2-29.5)
- 2) Add specifications for the issuance of a Construction in a Floodway Permit that is issued to remove a logjam or mass of wood debris in a natural, scenic, or recreational river or stream with equipment other than by hand or hand-held tools (312 IAC 10-4-5)
- 3) Remove the references to a general license for logjams in 312 IAC 10-5-0.3
- 4) Clarify requirements for obtaining approval for the removal of a logjam or mass of wood debris in a salmonid stream (general license with notice to the department) in 312 IAC 10-5-6
- 5) Establish a general license with notice for removal of a logjam or mass of wood debris in a natural, scenic, or recreational river or stream only with hand-held tools in the waterway (312 IAC 10-5-6.5)

Below is the governing statute:

**IC 14-28-1-22**

*(b) This section does not apply to the following:*

*....(6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:*

*(A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.*

*(B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.*

*(C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.*

*(D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:*

*(i) Associated with or in close proximity to larger obstructions.*

*(ii) Posing a hazard to navigation.*

*(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close*

*proximity to an obstruction. The root system and stump of the tree must be left in place.*

*(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.*

*(G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.*

*(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.*

*(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.*

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #10-

**DIGEST**

Adds 312 IAC 10-2-29.5 to define a mass of wood debris. Adds 312 IAC 10-4-5 to authorize a license for the removal of a logjam or mass of wood debris in a natural, scenic, or recreational river. Amends 312 IAC 10-5-0.3 to remove the reference to logjams and make other technical corrections. Amends 312 IAC 10-5-6 governing the removal of logjams in salmonid streams with written notice to the department. Adds 312 IAC 10-5-6.5 to allow the removal of logjams in natural, scenic, and recreational rivers under a general license with written notice to the department. Effective thirty days after filing with the Publisher.

**312 IAC 10-2-29.5; 312 IAC 10-4-5; 312 IAC 10-5-0.3; 312 IAC 10-5-6; 312 IAC 10-5-6.5**

**SECTION 1. 312 IAC 10-2-29.5 IS ADDED TO READ AS FOLLOWS:**

**312 IAC 10-2-29.5 “Mass of Wood Debris” defined**

**Authority: IC 14-10-2-4; IC 14-28-1-22**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 29.5. “Mass of wood debris” means an accumulation of lodged trees or other woody debris that is any of the following:**

- (1) causing or threatening to cause flooding on a road or private property;**
- (2) impeding navigation by a boat; or**
- (3) reducing the capacity of a waterway to transport water.**

**SECTION 2. 312 IAC 10-4-5 IS ADDED TO READ AS FOLLOWS:**

**312 IAC 10-4-5 Removal of logjams or mass of wood debris from a natural, scenic, or recreational river or stream**

**Authority: IC 14-10-2-4; IC 14-28-1-22**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 10-4-5. (a) If the department issues a license under this section, a person may remove a logjam or wood debris from a waterway included under 312 IAC 7-2 in the Indiana natural, scenic, and recreational river system.**

**(b) A person issued a license under this section must comply with these conditions:**

- (1) Limit activities to the use of an excavator, small tractor, or similar equipment.**
- (2) Remove the logjam or mass of wood debris from July 1 through March 31 of the following year, unless the logjams or wood debris are removed only if deposited as a result of a flood for which the Governor declares a disaster.**
- (3) With an access road that would not:**
  - (A) Destroy more than one-half (1/2) of an acre of trees within a floodway;**
  - (B) Traverse a wetland indicated on the national wetlands inventory map unless pads are used;**
  - (C) Raise the elevation of the flood plain; or**
  - (D) Cross a waterway.**

- (4) With access exclusively from one (1) side of the waterway.
- (5) Appropriate sediment control measures must be installed to prevent the flow of sediment-laden water back into the waterway.
- (6) All bare and disturbed areas must be revegetated with a mixture of grasses and legumes within fifteen (15) days of completion of work. Tall fescue must not be used under this subsection, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes. All sites that cannot be revegetated due to the growing season must be covered with appropriate erosion control blankets to stabilize the shoreline.

**(c) Removal of the logjam or mass of wood debris must not result in the taking of:**

- (1) A species listed in the “Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern)”, Information Bulletin #2-Fourth Amendment (August 1, 2007), published in the Indiana REGISTER at 20070815-IR-312070469NRA; or
- (2) An unreasonable taking of a known mussel resource.

**SECTION 3. 312 IAC 10-5-0.3 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 10-5-0.3 Determining project eligibility for a general license; general criteria**

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 0.3. (a) Except as provided in subsections (b) and (c), a project for a utility line crossing, the removal of logjams and obstructions, or the placement of outfall projects within a floodway is eligible for a general license if the project satisfies the requirements of this rule. For the removal of logjams and obstructions, these requirements include the procedures established by section 0-6 6 of this rule and IC 14-28-1-22.

**(b) Subsection (a) does not authorize a project in any of the following circumstances:**

- (1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water's fish and wildlife's environmental unit has been obtained.
- (2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).
- (3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.
- (4) For a utility line crossing, below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.
- (5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

**(c) Subsection (a) does not authorize the removal of logjams or obstructions within one half (1/2) mile of any of the following:**

- (1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.
- (2) A known mussel resource.
- (3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

**(d) The limitations contained in subsection (b) and subsection (c) [subsections (b) and (c)] do not apply to section 7 of this rule. (Natural Resources Commission; 312 IAC 10-5-0.3; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3875; readopted filed Jul 21, 2008, 12:00 p.m.: 20080813-IR-312080072RFA)**

**SECTION 4. 312 IAC 10-5-6 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 10-5-6 Removal of logjams or mass of wood debris from a salmonid stream; general license with notice**

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1; IC 14-29-1

Sec. 6. (a) This section establishes a general license for the removal of logjams **or mass of wood debris** from a waterway **that is a salmonid stream designated under 327 IAC 2-1.5-5** for the purpose of providing maintenance to help control flooding.

(b) This section does not authorize the removal of logjams and obstructions from ~~a waterway identified under section 0.3 of this rule~~ **waterways other than salmonid streams designated under 312 IAC 2-1.5-5.**

(c) A person who wishes to implement a project for ~~obstruction~~ **the removal of logjams or masses of wood debris** from a waterway ~~not under section 0.3 of this rule~~ **referenced in subsection (a)** must file a written notice, upon a department form, with the division of ~~water's~~ **fish and wildlife's** environmental unit, including the following information:

- (1) A description of the river or stream where obstruction removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:
  - (A) a United States Geological Survey topographic map;
  - (B) ~~a national wetlands inventory map;~~ or
  - ~~(C)~~ another map determined by the department to satisfy the purposes of this section.
- (2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor shall also be provided.
- (3) **Documentation that** the person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal. Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:
  - (A) With respect to a regulated drain, by the drainage board.
  - (B) With respect to a mutual drain, by all the beneficiaries to the drain.
  - (C) By the governing body of any county, municipality, or conservancy district in which the project is located.
- (4) Photographs, videotapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:
  - (A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.
  - (B) Large amounts of fine sediments have not covered or become lodged in the obstruction.
  - (C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.
- (5) A statement by the person, including the following terms and agreements:

(A) Obstructions will be removed through the use of hand-operated equipment, such as axes, chain saws, and portable winches.

(B) Any site will be identified within the project for which the use of hand-operated equipment is determined to be impracticable. If a site is identified under this subdivision, the statement must include:

- (i) what equipment would be used; ~~and~~
- (ii) that the equipment will not be equipped for excavation; ~~and~~
- (iii) that the equipment would be used only from the bank and not placed in the river or stream.**

Examples of equipment that may be suitable include the following:

- (i) A small tractor.
- (ii) A backhoe equipped with a hydraulic thumb.
- (iii) A bulldozer with its blade up.
- (iv) A log skidder.

(C) Free logs or affixed logs that are crossways in the channel **and proposed to be removed by the applicant** will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:

- (i) associated with or in close proximity to larger obstructions **that are impeding navigation or the flow of water;** or
- (ii) posing a hazard to navigation.

(E) A severely damaged; ~~or leaning, or other damaged~~ tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction **that impedes navigation or the flow of water in the waterway.** The root system and stump of the tree will be left in place.

(F) No access road will be constructed that will do any of the following:

- (i) Destroy more than one (1) acre of trees within a floodway.
- (ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used.
- (iii) Raise the elevation of the flood plain.
- (iv) Cross a waterway.

(G) Work shall be conducted exclusively from one (1) side of a river or stream.

**(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.**

**(I) Within fifteen (15) days of completion of work, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subsection, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes. All sites that cannot be revegetated due to the growing season must be covered with appropriate erosion control blankets to stabilize the shoreline.**

**(J) Work shall be conducted anytime of year with hand-operated equipment and from June 16 through July 14 and from December 1 through March 14 with other equipment.**

**(d) Within twenty (20) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the department shall ~~act upon the~~ provide a written notice as set forth under section 0.6 of this rule response that does one (1) of the following:**

- (1) Approves the terms of the notice.
- (2) Provides additional conditions to the approval.
- (3) Requires additional information relative to the affects on the capacity of the floodway, the safety of life or property, or effects upon fish, wildlife or botanical resources.
- (4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.

**If the department does not respond under this subsection in a timely fashion, the written notice is approved.**

(e) A general license for obstruction removal under this section expires:~~(1) ninety (90) days after the receipt of the department's written approval under section 0.6(c) of this rule. (2) If there is no response by the department under section 0.6(c) of this rule and the applicant acts under section 0.6(d) of this rule, one hundred five (105) days after the date recorded on the applicant's certificate of mailing.~~

(f) A person who elects to act under this general license must comply with **each of the following:**

(1) The terms of the written notice provided under subsection (c) and ~~with any;~~

~~The applicable conditions provided by the department; and with~~

(2) Any additional conditions provided by the department under ~~section 0.6(c) of this rule~~ **subsection (d) and IC 14-28-1-22.** Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1. *(Natural Resources Commission; 312 IAC 10-5-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3396, eff Jan 1, 2002; filed Aug 2, 2004, 3:18 p.m.: 27 IR 3878; readopted filed Jul 21, 2008, 12:00 p.m.: 20080813-IR-312080072RFA)*

**SECTION 5. 312 IAC 10-5-6.5 IS ADDED TO READ AS FOLLOWS:**

**312 IAC 10-5-6.5 Removal of logjams or mass of wood debris from a natural, scenic, or recreational river or stream; general license with notice**

**Authority: IC 14-10-2-4; IC 14-28-1-22**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 10-5-6.5. (a)** This section establishes a general license for the removal of logjams or mass of wood debris from a waterway that is a natural, recreational, or scenic river designated under 312 IAC 7-2 for the purpose of providing maintenance to help control flooding.

**(b)** This section does not authorize the removal of logjams and obstructions from waterways other than natural, recreational, or scenic rivers designated under 312 IAC 7-2.

**(c)** A person who wishes to implement a project for the removal of logjams or masses of wood debris from a waterway referenced in subsection (a) must file a written notice, upon a department form, with the division of fish and wildlife's environmental unit, including the following information:

(1) A description of the river or stream where obstruction removal would occur, including the terminal points, access routes, and disposal sites of the project referenced to readily discernible landmarks, for example, a bridge or a dam. The project shall be designated with access routes to the obstruction on:

(A) a United States Geological Survey topographic map; or

(B) another map determined by the department to satisfy the purposes of this section.

- (2) The name, address, and telephone number of the person who is seeking the general authorization. If all or some of the activities will be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.**
  - (3) Documentation that the person is the owner of the river or stream (or the sole riparian owner along a navigable river or stream), or another basis by which the person demonstrates permission to enter upon the project site and to perform logjam removal. Permission must be demonstrated for an access route and for a site where logs or other debris will be secured following removal from the waterway. The person must also show participation or agreement by other interested persons in the following circumstances:**

    - (A) With respect to a regulated drain, by the drainage board.**
    - (B) With respect to a mutual drain, by all the beneficiaries to the drain.**
    - (C) By the governing body of any county, municipality, or conservancy district in which the project is located.**
  - (4) Photographs, videotapes, or other graphic documentation that demonstrate the following conditions exist on the waterway:**

    - (A) Accumulations of logs, root wads, and other debris that occasionally or frequently span the waterway and may be interlocked.**
    - (B) Large amounts of fine sediments have not covered or become lodged in the obstruction.**
    - (C) Accumulations are extensive enough to cause bank erosion and upstream ponding damages.**
  - (5) A statement by the person, including the following terms and agreements:**

    - (A) Obstructions will be removed by hand or hand-held tools, such as axes, chain saws, and portable winches, in the waterway.**
    - (B) Free logs or affixed logs that are crossways in the channel and proposed to be removed by the applicant will be cut, relocated, and removed from the flood plain unless the logs are piled and secured by cables in an area not threatened by the flow of water. Logs will be removed and secured with a minimum damage to vegetation and placed outside any wetlands.**
    - (C) Isolated or single logs that are embedded, lodged, or rooted in the channel and do not span the channel or cause flow problems will not be removed unless:**

      - (i) associated with or in close proximity to larger obstructions that are impeding navigation or causing erosion; or**
      - (ii) posing a hazard to navigation.**
    - (E) A severely damaged or leaning tree that is in immediate danger of falling into the waterway may be cut and removed, but only if the tree is associated with or in close proximity to an obstruction that impedes navigation or is causing erosion. The root system and stump of the tree will be left in place.**
    - (F) Work will be done only from July 1 through March 31 of the following year, unless the logjams or wood debris are removed only if deposited as a result of a flood for which the Governor declares a disaster.**
- (d) Within twenty (20) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the department shall provide a response that does one (1) of the following:**
- (1) Approves the terms of the notice.**
  - (2) Provides additional conditions to the approval.**
  - (3) Requires additional information relative to the effects on the capacity of the floodway, the safety of life or property, or effects upon fish, wildlife or botanical resources.**



- (4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1, or both.**

**If the department does not respond under this subsection in a timely fashion, the written notice is approved.**

- (e) A general license for obstruction removal under this section expires ninety (90) days after the receipt of the department's written approval**

- (f) A person who elects to act under this general license must comply with each of the following:**

- (1) The terms of the written notice provided under subsection (c); and**
- (2) Any additional conditions provided by the department under subsection (d) and IC 14-28-1-22. Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1 or, if the waterway is navigable, the violation of a license issued under IC 14-29-1.**

**To be Repealed:**

**312 IAC 10-5-0.6 Relief from general criteria for determining project eligibility for a general license**